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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,342	09/08/2003	William Alan Kinkead	KIBI.107063	1666
5251	7590	04/22/2004	EXAMINER	
SHOOK, HARDY & BACON LLP 2555 GRAND BLVD KANSAS CITY,, MO 64108			OLSON, LARS A	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/657,342	KINKEAD, WILLIAM ALAN
	Examiner Lars A Olson	Art Unit 3617

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 5-18 is/are rejected.
- 7) Claim(s) 2-4 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 September 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12162003.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 12 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemke (US 5,732,645) in view of Sohm (US 5,911,187) and Kinkead (US 5,697,316).

Lemke discloses a marine fender assembly for protecting a boat, as shown in Figures 1-8, said fender being comprised of a plastic body portion, defined as Part #18 in Figure 1, having a top part, as shown in Figure 2, that extends downwardly and outwardly from a fence rail, defined as Part #16 in Figure 3, and a bottom part, defined as Part #28, that extends downwardly over a side of the hull of said boat, as well as a means for removably coupling said top part to said fence rail, defined as Parts #46 and 48 in Figures 2 and 3.

Lemke, as set forth above, discloses all of the features claimed except for the use of a pontoon boat with a fence, a fender with a bottom part that extends downwardly and inwardly along the side of a boat, and a means for removably coupling a bottom part of a fender to the side of a boat.

Sohm discloses a pontoon boat, as shown in Figures 1-3, that is comprised of at least two float tubes, defined as Part #12, for supporting a floor or deck, defined as Part #14, and a fence or railing, defined as Part #16, that is positioned around the periphery of said deck, as shown in Figure 1, where said fence has a generally vertical main part and a generally horizontally extending rail that is coupled to the top of said main part, as shown in Figure 3.

Kinkead discloses a boat bumper or fender, as shown in Figures 1-3, that is comprised of a body portion, defined as Part #20, with a top part, defined as Part #30, and a bottom part, defined as Part #32, that extends generally downwardly and inwardly along the side of a boat, as shown in Figures 2 and 3, and a means for removably coupling said bottom part of said body portion to the side of a boat, said means being in the form of a resilient cord, defined as Part #54 and a suction cup, defined as Part #50.

The use of a coupling means in the form of a bungee cord having a diameter of an eighth of an inch would be considered by one of ordinary skill in the art to be a design choice based upon the required tensile strength of said cord and the desired elasticity of said cord in order to function as a coupling means.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to utilize a boat in the form of a pontoon boat with a fence, as taught by Sohm, and a fender with a bottom part having a means for removably coupling to the side of a boat, as taught by Kinkead, in combination with the marine fender assembly for protecting a boat as disclosed by Lemke for the purpose of providing a fender that is capable of attaching to and extending between a fence rail

and a pontoon of a pontoon boat in order to protect a side of said pontoon boat from impact damage.

3. Claims 1, 5-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemke in view of Sohm and Kinkead, and further in view of Loomis (US 4,280,435).

Lemke in combination with the teachings of Sohm and Kinkead shows the use of all of the features claimed except for the use of a fender with a top part having a top rim that ends at a flange that forms a channel for receiving a fence rail.

Loomis discloses a boat fender assembly, as shown in Figures 1-4, having a top part, defined as Part #110, and a bottom part, defined as Part #300, where said top part is further comprised of a top rim that extends generally horizontally from said top part and ends at a flange that extends generally downwardly to form a channel for receiving a boat fence rail, defined as Part #10 in Figure 1.

The use of a top rim of a fender assembly having a width that is equal to a width of a fence rail would be considered by one of ordinary skill in the art to be a design choice based upon the desired fit of said top rim over a boat fence rail, and the amount of clearance to be given between said top rim and said fence rail.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to utilize a fender assembly with a top part having a top rim, a flange and a channel for receiving a boat fence rail, as taught by Loomis, in combination with the marine fender assembly for protecting a boat as disclosed by Lemke and the teachings of Sohm and Kinkead for the purpose of providing a means for coupling a

fender assembly to a fence rail of a boat without the use of mechanical fasteners or ropes.

***Allowable Subject Matter***

4. Claims 2-4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. DeRuscio (US 6,021,729), Harvey (US 5,701,837), Lemke (US 5,355,822), Loucks (US 5,299,521), Carlstedt (US 4,895,094) and Lang (US 3,000,021) disclose various marine fenders for protecting a boat, each of said fenders having a means for removably coupling to the side of a boat.

6. Any inquiry concerning this communication from the examiner should be directed to Exr. Lars Olson whose telephone number is (703) 308-9807.

lo

April 20, 2004

LARS A. OLSON  
PATENT EXAMINER

  
4/20/04